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No. 42.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1961.

(No. 687, October Term, 1960.)

PHIL CAMPBELL, Commissioner of Agriculture of the State of Georgia, and GEORGIA FARM BUREAU FEDERATION, INC., Intervenor,
Appellants,

v.

WILLIAM HUSSEY, JR., AULBERT J. BRANNEN, SR., AULBERT J. BRANNEN, JR., ROBERT B. BRANNEN, GEORGE C. SUGG, ED WIGGINS, GUY SUTTON, SR., MRS. L. B. WILLOUGHBY,
Appellees.

On Appeal from the United States District Court for the Southern District of Georgia, Swainsboro Division.

BRIEF FOR THE APPELLANTS.

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Appellees.

On Appeal from the United States District Court for the Southern District of Georgia, Swainsboro Division.

BRIEF FOR THE APPELLANTS.

OPINION BELOW.

The Opinion of the United States District Court for the Southern District of Georgia, Swainsboro Division (R. 153-164) is reported at 189 F. Supp. 54.

JURISDICTION.

The jurisdiction of this Court to review the decision of the United States District Court by direct appeal is conferred by 28 U. S. C. A. 1253. The Opinion of the District

Court was entered on November 9, 1960 (R. 153-164). The Judgment of the District Court was entered on November 9, 1960 (R. 165-166). The Notice of Appeal of Georgia Farm Bureau Federation, Inc., was filed December 7, 1960 (R. 166-168). The Notice of Appeal of Phil Campbell, Commissioner of Agriculture of the State of Georgia, was filed December 8, 1960 (R. 168-169). This Court noted probable jurisdiction and transferred the case to the Summary Calendar on April 3, 1961 (R. 170).

STATUTES INVOLVED.

Federal Tobacco Inspection Act, 7 U. S. C. A., § 511, 511q, set forth in Appendix as Exhibit "A";

Georgia Tobacco Identification Act, Georgia Laws 1960, pages 214 to 227, inclusive (Ga. Code Ann., Ch. 111-2), set forth in Appendix as Exhibit "B."

QUESTIONS PRESENTED.

The questions presented for review by this Appeal are:

(1) Do the identification provisions of the 1960 Georgia Tobacco Identification Act that are complained of impose a burden upon interstate commerce that is prohibited by the commerce clause of the Federal Constitution?

(2) Is the State of Georgia precluded under the Federal Tobacco Inspection Act from identifying, as to type, tobacco sold at auction within the State?

(3) Does the State of Georgia have the power to require the identification of leaf tobacco sold at auction within the State?

(4) May appellees (plaintiffs below) raise the constitutional question?

STATEMENT.

The appellees filed their complaint in the District Court on July 30, 1960 (R. 1-11), seeking injunctive relief against appellant Phil Campbell as Commissioner of Agriculture of the State of Georgia. On the same date a preliminary restraining order was entered (R. 11-13) granting the relief sought pending hearing and determination of the issues. Thereafter, appellant, Georgia Farm Bureau Federation, Inc., filed its motion to intervene as a defendant (R. 19-21). After hearing, the three-judge District Court perpetually and permanently enjoined appellant Phil Campbell, Commissioner of Agriculture of the State of Georgia from enforcing the identification provisions of the Georgia Tobacco Identification Act.

The District Court determined and declared the identification provisions of the Georgia Tobacco Identification Act to be unconstitutional and invalid.

No attack has been made on other provisions of the Georgia Act and the appellees, who are warehousemen, have complied with the provisions of the Georgia Act pertaining to license, bonds, weighers, maximum fees and other provisions relative to the sale and reporting of sales of flue cured leaf tobacco at auction.

Under the Federal Tobacco Inspection Act, provisions have been made and regulations of the Secretary of Agriculture have been issued providing a basis of determining the various types and grades of flue cured leaf tobacco. Type 14 flue cured leaf tobacco has been defined by the Secretary of Agriculture as "That type of flue cured tobacco commonly known as southern flue cured or New Belt of Georgia, Florida and Alabama, produced principally in the southern section of Georgia and to some extent in Florida and Alabama." (7 C. F. R. § 29.1100).

The record shows that the Secretary of Agriculture has officially determined the production areas of the various types of flue cured tobacco and that tobacco produced in one of the areas and sold or moved in an area other than the area of production, without disclosing the type applicable to the area of production, would not be true to type (R. 125).

The General Assembly of Georgia, as recited in Section 1 of the Georgia Act (R. 154), found it essential and necessary in the proper marketing and identification of flue cured leaf tobacco that a positive means of identification of tobacco, by type, at the time of sale, be provided. In the same section of the Act, Type 14 tobacco is defined in the following language:

> "Type 14 flue cured leaf tobacco as used herein shall mean that flue cured leaf tobacco grown in the traditional loose-leaf area which consists of the States of Georgia, Florida and Alabama."

Section 13. (E) of the Georgia Act, 1960 Georgia Laws, page 221, provides:

> "13. . . .
>
> "(E) It is the intent and purpose of this section to provide a means to positively identify type 14 tobacco and to require that types other than type 14 be identified and marketed in such manner as to indicate the type to any person seeking to ascertain the type of tobacco offered for sale in this State."

To accomplish this identification, the Georgia Act required each tobacco warehouseman to determine the origin of the tobacco at the time of the receipt of the tobacco offered for sale and to identify Type 14 tobacco by the use of a white tag. The warehouseman was required to identify other than Type 14 tobacco by the use of a colored tag (designated by the Commissioner of Agriculture of the

State of Georgia as blue). Such tags were to remain with the sheets of tobacco at all times while the tobacco remained in the State of Georgia. Other means were provided for the identification of tobacco offered for resale.

The District Court held (R. 160) that the Georgia statute defines Type 14 tobacco on the basis of geographical origin and upon no other basis, and further that both the purpose and effect of the Georgia enactment were to make a distinction at the markets by the color tags between tobacco grown in Georgia and that grown elsewhere. After holding that the Georgia statute imposed upon the producers of tobacco in States other than Georgia onerous burdens which it did not impose upon Georgia growers (R. 161), the Court held that the Federal Constitution forbids such discrimination as an unlawful interference with interstate commerce. The District Court further held (R. 161) that the Congress, by the Federal Tobacco Inspection Act, had so occupied or preempted the field covered by the challenged provisions of the Georgia statute that the Georgia statute could not stand. The District Court further declined to sustain the contention of the appellants that the questioned sections of the Georgia statute implemented the Federal Act and regulations and that the Georgia statute was a valid exercise of the police power of the State (R. 162).

SUMMARY OF ARGUMENT.

A. The State of Georgia has the authority to identify tobacco as to type at the time of sale. The Georgia Act substantially adopts the Federal definition of Type 14 tobacco grown in the States of Georgia, Florida and Alaplace, Type 14 tobacco is recognized by the industry and by the United States Department of Agriculture as that tobacco grown in the State of Georgia, Florida and Alabama. Neither the industry nor the United States Department of Agriculture will recognize tobacco grown in any State other than the three named to be Type 14 and be true to type.

The sale of tobacco at auction involves interstate commerce. The tobacco industry is an industry of tremendous economic importance to the State of Georgia and its people and the State may take action in the valid exercise of its police power to protect the industry and the interest of the people in the industry.

The enactment by the Congress of the Federal Tobacco Inspection Act is not such action by the Congress to preclude or pre-empt action by the State of Georgia in identifying tobacco where the State action is not in conflict with the Federal action. The identification of tobacco as to type at the time of sale by the State of Georgia is not in conflict with the Federal Act.

Applying the principle that where an Act is susceptible to two constructions, one of which will uphold the Act in question, it has not been shown that the Georgia Act is in conflict with the Federal Act. The cases in this Court hold that there must be an actual conflict between the State action and the Federal action so as to void the State action. The Federal Tobacco Inspection Act, by its language, provides for cooperation between Federal and State agencies.

The Georgia Act in question does not attempt to provide any new or different type of classification or grading provisions. It seeks merely to provide a positive means of identification of tobacco at the time of sale so as to enable all persons having an interest therein to determine the true type of the tobacco.

The actual operation of the Act precludes the perpetration of a fraud upon purchasers in that it requires the true identity to be made known.

B. Appellees, complainants below, do not have standing to raise the constitutional question here presented because they have not shown an injury, danger, damage, or the invasion of a right such as to give them the requisite standing to raise the constitutional question. The record here showed that the damage complained of is not a direct result of the operation of the Act but is the result of the action of others. The complainants below place their standing solely upon their damage, that damage resulting from the action of others than the State of Georgia and not as a direct and natural consequence of the Act itself, which removes the standing to raise the constitutional question. The complainants have not shown themselves to have the proper standing to raise the constitutional question.

ARGUMENT.

While four questions are presented, three of those questions (1, 2 and 3) can be discussed under one division of this brief. Those questions essentially deal with two broad subdivisions:

(1) The power of the State to regulate activities of the tobacco auction which are essentially local in character and which are relative to an industry, the economic impact of which is of considerable import to the State; and

(2) Whether or not the effort to so regulate can be exercised in the manner attempted here. Embraced in this portion of the question are:

(a) Has the Federal Government so preempted the field as to preclude any State action, and

(b) If the Federal Government has not so preempted the field, is the State action in such conflict with the Federal action as to render it an illegal regulation on the part of the State?

The second broad question presented is the question of the standing of the complainants in this case to raise the constitutional issue. This question is raised only if the position of the appellants here (defendants below) under the first division is untenable.

A. Power of the State to identify tobacco as to type. It is conceded that, under decisions of this Court, the sale of tobacco at auction involves interstate commerce. **Currin v. Wallace,** 306 U. S. 1, 83 L. ed. 441, 59 S. Ct. 379. Involving as it does interstate commerce, the question is presented: Does the action of the State in this instance impose such an onerous burden as to make it unconstitutional exercise of State power? The lower court held, as one of the reasons for striking down the statute, that the

Act here involved was an onerous burden and thus must fail. The record in the case, the findings of the General Assembly of Georgia, and a previous decision of this Court (**Townsend v. Yoemans**, 301 U. S. 441, 81 L. ed. 1210, 57 S. Ct. 842), affirmatively demonstrate that the tobacco industry is an industry of tremendous economic importance to the State and to its people. This being true, it is our contention that the State may take action in the valid exercise of its police power to protect it and its people's interest in this field. In **City Service v. Peerless**, 340 U. S. 179, 95 L. ed. 190, this Court said:

> "The commerce clause gives to the Congress a power over interstate commerce which is both paramount and broad in scope. But due regard for state legislative functions has long required that this power be treated not exclusive . . . It is now well settled that a State may regulate matters of local concern over which Federal authority has not been exercised, even though the regulation has some impact on interstate commerce . . . The only requirements consistently recognized have been that the regulation not discriminate against or place an embargo on interstate commerce, **that it safeguard an obvious State interest**, and that the local interest at stake outweigh whatever national interest there might be in the prevention of State restrictions."

In Sligh v. Kirkwood, 237 U. S. 52, 59 L. ed. 835, 35 S. Ct. 501, this Court said:

> "The police power in its broadest sense, includes all legislation and almost every function of civil government (Citing cases). It is not subject to definite limitations, but is coexistent with the necessities of the case and the safeguards of public interest . . . It embraces regulations designed to promote public convenience or the general prosperity or wel-

> fare, as well as those specifically intended to promote the public safety or the public health."

That case involved the same principles presented in this case. A statute of the State of Florida undertook to make it unlawful for anyone to sell or offer for sale citrus fruits which are immature or otherwise unfit for consumption. The constitutionality of that Act was challenged insofar as it applied to interstate commerce. This Court rejected the contention that the Act was beyond the police powers of the State of Florida since it did not seek to protect the health of persons within the State of Florida. In rejecting it, this Court said:

> "The limitations upon the police power are hard to define, and its far reaching scope has been recognized in many decisions of this Court. At an early day it was held to embrace every law or statute which concerns the whole or any part of the people, whether it related to their rights or duties, whether it respected them as men or citizens of the State, whether in their public or private relations, whether it related to the rights of persons or property of the public or any individual within the State."

Then, taking judicial notice that the citrus industry is one of the great industries of the State of Florida, this Court held that it was competent for the legislature of the State of Florida to find that it was essential for the success of that industry, that its reputation be preserved in other States wherein such fruits might find their most extensive market:

> "The protection of the State's reputation in foreign markets, with the consequent beneficial effect upon a great home industry, may have been within the legislative intent, and it certainly could not be said that this legislation has no reasonable relation to the accomplishment of that purpose . . .

> "Nor does it make any difference that such regulations incidentally affect interstate commerce, when the object of the regulation is not to that end, but is a legitimate attempt to protect the people of the state . . ."

The Georgia Act seeks to do just that. The record affirmatively demonstrates that Type 14 tobacco is that type as universally understood in its marketing to be only tobacco grown in Georgia, Florida and Alabama (testimony of Ben J. Narz, R. 114; Stipulation No. 4, R. 27).

In **Bayside Fish Flour Company v. Gentry**, 297 U. S. 422, 80 L. ed. 772, this Court upheld provisions of the California Fishing and Game Code, alleged to contravene the commerce clause, and due process and equal protection of the Federal Constitution, which regulated the packing and use of sardines caught beyond a three-mile limit off the coast of California. Even though the Act had some impact on interstate commerce, the Court pointed out that its direct operation, intended and actual, was wholly local. In the instant case, the identification provisions of the Georgia Act are in fact wholly local. The identification is required only on sales made within this State, on markets of this State, and is required to remain only so long as it remains in this State. The Act does not prohibit the free flow in commerce of tobacco from other States, but only subjects them to identification when they come within this State for the purpose of being traded on the markets of this State, and are actually placed on such markets for sale. The identification itself is not a burden. It may well be that the purchasers who seek a particular product and who are accurately apprised of the product which they are purchasing might, because of economic factors, pay less for Type 12 or 13, or other types of tobacco than for Type 14 tobacco, but the activities of the State of Georgia are designed to, and in fact do, merely identify the

product. In **Milk Control Board of Pennsylvania v. Eisenberg Farm Products**, 306 U. S. 346, 83 L. ed. 752, this Court upheld a Milk Control Act of the State of Pennsylvania even though it had an effect on interstate commerce, and in so doing, observed:

> "One of the commonest forms of State action is the exercise of police power directed to the control of local conditions and exerted in the interest of the welfare of the State's citizens. Every State's police statute necessarily will affect interstate commerce in some degree, but such a statute does not run counter to the granting of Congressional power merely because it incidentally or indirectly involves or burdens interstate commerce."

Of course there are those cases which have stricken down State statutes purportedly enacted in the exercise of police power which affected interstate commerce, some of which were relied on by the court below, such as **Lempke v. Farmers Grain Company**, 258 U. S. 50, 66 L. ed. 458, 42 S. Ct. 244, and **Shafer v. Farmers Grain Company**, 268 U. S. 189, 45 S. Ct. 481, 69 L. ed. 909. North Dakota statutes attempted an elaborate price-fixing scheme on wheat grain in North Dakota, ninety per cent of which was shipped to Minnesota, and such was overthrown by this Court. But a reading of those statutes and of those cases demonstrates that the initial action of the State itself resulted in interstate impact and its effect was carried beyond the borders of the enacting State.

Here the State of Georgia seeks to do one thing and one thing alone, advise the purchasers of a given product of the proper identification of that product. Having done that, the State of Georgia retires from the field. Any subsequent effect stems entirely from the actions of the buyers of the product in their exercise of their free right to pay a price based upon their desire, or lack of desire,

for the particular article. It seems to us that it is not a valid argument that because Type 14 tobacco commands a better price than other types, the mere action of the State in properly identifying the tobacco is the cause of that price differential. To so conclude runs counter to universal human knowledge and economic experience dictated by the law of supply and demand. The price differential, if any, results from the activity of the individual purchaser and the only participation of the State has been merely to advise that purchaser of the identity of the product he is purchasing.

In **Plymouth Coal Company v. Pennsylvania**, 232 U. S. 531, 58 L. ed. 712, this Court said:

> "It is a general and fundamental rule that if a statute be reasonably susceptible of two interpretations, one of which would render it unconstitutional and the other valid, it is the duty of the court to adopt that construction which will uphold its validity, there being a strong presumption that the lawmaking body has intended to act within, and not in excess of, its constitutional authority."

The opinion below demonstrates a rejection of this principle by the lower court, indeed a reversal of the principle, for the Court states without comment or elaboration, that:

> "The Georgia statute imposes upon the producers of tobacco in other States who bring their products into that State for sale onerous burdens which it does not impose upon Georgia growers."

What is that burden? The duty to identify? The same burden is imposed upon the Georgia grower. The only result is that one product, whose origin is not confined to Georgia alone, but also includes Florida and Alabama, is more desired in the market place.

It seems to us, therefore, that it cannot be questioned that the State of Georgia under the decided cases of this Court has a right under its police power to impose the regulation hereunder attacked, despite the interstate commerce clause.

We recognize that if Congress has pre-empted the field in which Georgia attempts to act, this Act must fall. As stated in **Southern Pacific Co. v. Arizona**, 325 U. S. 761, 89 L. ed. 1915, 65 St. Ct. 1515, the Supreme Court of the United States had this to say:

> "Congress in enacting legislation within its constitutional authority over interstate commerce will not be deemed to strike down a state statute designed to protect the health and safety of the public unless its purpose to do so is clearly manifested, . . . or unless the state law, in terms or in its practical administration, conflicts with the Act of Congress, or plainly and palpably infringes its policy."

Or we turn to **Rice v. Santa Fe Elevator Corp.**, 331 U. S. 218, 91 L. ed. 1447, 67 S. Ct. 1146, where in speaking for the Court on the subject of pre-emption, by the Federal government, so as to exclude legislation by States, Justice Stone wrote, beginning on page 230:

> "The question in each case is what the purpose of Congress was. . . . So we start with the assumption that the historic police powers of the States were not to be superseded by the federal Act unless that was the clear and manifest purpose of Congress . . . Such a purpose may be evidenced in several ways. The scheme of federal regulation may be so pervasive as to make reasonable the inference that Congress left no room for the State to supplement it, . . . Or the Act of Congress may touch a field in which the federal interest is so dominant that the federal system

> will be assumed to preclude enforcement of state laws on the same subject. . . . Likewise, the object sought to be obtained by the federal law and the character of obligations imposed by it may reveal the same purpose . . . Or the state policy may produce a result inconsistent with the objective of the federal statute."

In order for this Act to be stricken, those attacking it must demonstrate first that there is a clear preemption and intention to preempt, and secondly, if the statute is capable of two interpretations, then that interpretation which would uphold its validity should be given.

Is there such a clear preemption as to preclude the State from acting? Examining the Federal Act, do we find any expression of Congress that would support a theory of exclusive occupation of the field? No. However, we find several sections which do support the theory that Congress did not intend to completely occupy the field.

Section 6 of the Federal Act begins with these words:

> "That the Secretary, independently or in cooperation with other branches of the Government, State agencies, or persons, . . ."

Does this sound as though Congress intended that only Federal agencies should be allowed to act here? A similar question arose concerning the Federal Commodity Exchange Act, and the Supreme Court, in ruling that the Act did not preempt so as to deprive States of regulation in the field, stated in **Rice et al. v. Chicago Board of Trade,** 331 U. S. 247, 91 L. Ed. 1468, 67 S. Ct. 1160, at page 255:

> "Moreover the provision in § 12 of the Act that the Secretary 'may cooperate with any department or agency of the Government, and State . . . or

political subdivision thereof' supports the inference that Congress did not design a regulatory system which excluded state regulation not in conflict with the federal requirements. . . ."

The lower court concludes that Congress preempted the field as the second basis for striking down the Act. In so doing, the court concludes that Section 2 of the Tobacco Inspection Act is clear evidence of Congress' intention to preempt the field. That Section states that:

"Without uniform standards of classification and inspection . . . unreasonable fluctuations in prices and quality determinations occur . . . such fluctuations constitute a burden upon commerce and make the use of uniform standards of classification and inspection imperative . . ."

The Act further authorizes the Secretary to establish standards by type, grade, size, etc. Is this language and this power such a clear demonstration of Congress' intention to preempt the field as to authorize the Federal Courts to exercise their power to strike down the Georgia Act? This Court has many times said that the exercise of this power should be cautiously used in order to maintain the delicate balance of our Federal system. **Mathews v. Rodgers**, 284 U. S. 521, 76 L. Ed. 447. The Georgia Act does not attempt to type, does not attempt to establish, a classification. It merely seeks to identify. Its identification provision virtually adopts the Federal definition. The Georgia definition of Type 14 tobacco is identical to the Federal definition save for a few words. The Federal definition is:

"That type of flue-cured tobacco commonly known as Southern Flue-cured or New Belt of Georgia, Florida, and Alabama, produced principally in the southern section of Georgia, and to some extent in Florida and Alabama." (7 C. F. R., § 29.1100.)

The Georgia definition is:

> "Type of flue-cured leaf tobacco as used herein shall mean that flue-cured leaf tobacco grown in the traditional loose-leaf area which consists of the States of Georgia, Florida, and Alabama." (Georgia Laws, 1960, pp. 214-227, inclusive, at page 216.)

The common understanding in the marketplace (testimony of Ben J. Narz, R. 114), the official Federal publication (Defendant's Exhibit 1—map), and the Stipulation of the Parties (Stipulation No. 4, R. 27), is that the Georgia definition is in fact the one practically in force under the Federal Act. In this case, there is no evidence, there is no contention, that the Georgia definition in application, and in fact, causes a typing of a person's tobacco contrary to what its type would be under the Federal definition. The lower court summarizes that there exists the possibility that under Georgia's definition, some person's tobacco **may** be typed differently from what it would be under the Federal Act. But no such person is before this Court. No evidence is here from which it can be fairly concluded that tobacco, which under the Federal Regulation would be Type 14, is in fact precluded from having that type indicated under the Georgia Act. Indeed the record demonstrates that the actual state of facts demands the contrary conclusion. Perhaps a person who, under Federal Regulation, was possessed of Type 14 tobacco, and who would be precluded from receiving on the Georgia markets an identification as Type 14 under the Georgia Act, if such were possible, could assail this statute as discriminatory, but until such a person appears, and until it is shown by other than speculation and conjecture, that such a person exists, the police power of the State and the validity of its statute should be upheld.

The decided cases of this Court demonstrate that statutes of a State which dealt with a subject matter and a

field in which Congress has acted, will not be stricken down merely because Congress has acted; but such cases call "for the application of the well established principle that Congress may circumscribe its regulation and occupy a limited field, and that the intent to supersede the exercise by the State of its police power as to matters not covered by the Federal regulation is not to be implied unless the latter, fairly interpreted, is in actual conflict with the State law." In **City Service v. Peerless**, 340 U. S. 179, 95 L. Ed. 190, an order of a State Commission fixing the well-head price of natural gas produced within its borders, and sold in-State, was upheld despite the broad power of the Federal Natural Gas Act and the Federal Power Commission given pursuant thereto.

In **Turner v. Maryland**, 107 U. S. 38, 27 L. Ed. 370, this Court upheld the right of the State of Maryland to inspect and identify tobacco shipped from that State in interstate commerce despite Federal action in that field. In **Detwiler v. Welsh**, 46 F. 2d 71, the Circuit Court of Appeals for the Ninth Circuit upheld an Act of the State of Idaho calling for the classification of potatoes shipped from that State in interstate commerce even though Federal classification was also in existence. In **Pacific States Box Company v. White**, 296 U. S. 176, 80 L. Ed. 138, a State regulation prescribing the use of certain types of containers in marketing berries, which went in interstate commerce, was permitted even though Congress had a Federal Standard Baskets and Containers Act. This Court there pointedly remarked:

> "When such legislative action is called in question, if any state of facts reasonably can be conceived that could sustain it, there is a presumption of the existence of that state of facts and one who assails the classification must carry the burden by resorting to common knowledge or other matters which may be

judicially noticed or to other proof that the action is arbitrary."

In **Townsend v. Yeomans**, 301 U. S. 441, 81 L. ed. 1210, 57 S. Ct. 842, under the Georgia Act in question, the Secretary of Agriculture was given jurisdiction over markets; the State legislation regulating those markets was upheld by this Court.

In **Corn Products Refining Co. v. Eddy**, 249 U. S. 427, 63 L. ed. 689, 39 S. Ct. 325, the State of Kansas had adopted a law requiring all syrups sold in the State to show the percentage of each ingredient contained therein. The statute was attacked as a burden on interstate commerce and also on the grounds that the area was covered by the Federal Pure Food Act so that the field was preempted. The Supreme Court rejected these contentions citing **Savage v. Jones**, 225 U. S. 501, 56 L. ed. 1182, 32 S. Ct. 715, which was a dispute over an Indiana labeling Act for commercial feeding stuffs for animals. That Act was upheld as good against an attack on grounds of burdening interstate commerce and preemption by the Federal Food and Drug Acts. The Court, in its opinion:

"For when the question is whether a federal act overrides a state law, the entire scheme of the statute must of course be considered and that which needs must be implied is of no less force than that which is expressed. If the purpose of the act cannot otherwise be accomplished . . . if the operation within its chosen field else must be frustrated and its provisions be refused their natural effect . . . the state law must yield to the regulation of Congress within the sphere of its delegated power. . . . **But** the intent to supersede the exercise by the state of its police power as to matters not covered by the Federal legislation is not to be inferred from mere fact that Con-

gress has seen fit to circumscribe its regulation and to occupy a limited field. In other words, such intent is not to be implied unless the act of Congress fairly interpreted is in actual conflict with the law of the State. This principle has abundant illustration . . . The requirements, the enforcement of which the bill seeks to enjoin, are not in any way in conflict with the provisions of the Federal Act. They may be sustained without impairing in the slightest degree its operation and effect. There is no question here of conflicting standards, or of opposition of State to Federal authority."

This Court, in **Huron Portland Cement Co. v. Detroit**, 362 U. S. 440, 4 L. ed. 2d 852, 80 S. Ct. 813, dealt with the authority of a State to act concurrently with the Federal Government. At pages 442-445, the Court said:

"The ordinance was enacted for the manifest purpose of promoting the health and welfare of the city's inhabitants. Legislation designed to free from pollution the very air that people breathe clearly falls within the exercise of even the most traditional concept of what is compendiously known as the police power. In the exercise of that power, the states and their instrumentalities may act, in many areas of interstate commerce and maritime activities, concurrently with the federal government. Gibbons v. Ogden (U. S.), 9 Wheat. 1, 6 L. ed. 23; Cooley v. Board of Wardens (U. S.), 12 How. 299, 13 L. ed. 996; The New York v. Rea (U. S.), 18 How. 223, 15 L. ed. 359; Morgan's L. & T. R. & S. S. Co. v. Louisiana Bd. of Health, 118 U. S. 455, 30 L. ed. 237, 6 S. Ct. 1114; Minnesota Rate Cases (Simpson v. Shepard), 230 U. S. 352, 57 L. ed. 1511, 33 S. Ct. 729, 48 L. R. A. N. S. 1151, Ann. Cas. 1916A 18; Wilmington Transp. Co. v. Railroad Com., 236 U. S. 151, 59 L. ed. 508, 35

S. Ct. 276; Vandalia R. Co. v. Public Service Com., 242 U. S. 255, 61 L. ed. 276, 37 S. Ct. 93; James Stewart & Co. v. Rivara, 274 U. S. 614, 71 L. ed. 1234, 37 S. Ct. 718; H. P. Welch Co. v. New Hampshire, 306 U. S. 79, 83 L. ed. 500, 59 S. Ct. 438.

"The basic limitations upon local legislative power in this area are clear enough. The controlling principles have been reiterated over the years in a host of this Court's decisions. Evenhanded local regulation to effectuate a legitimate local public interest is valid unless pre-empted by federal action, Erie R. Co. v. New York, 233 U. S. 671, 58 L. ed. 1149, 34 S. Ct. 756, 52 L. R. A. N. S. 266, Ann. Cas. 1915D 138; Oregon-Washington R. & Nav. Co. v. Washington, 270 U. S. 87, 70 L. ed. 482, 46 S. Ct. 279; Napier v. Atlantic Coast Line R. Co., 272 U. S. 605, 71 L. ed. 432, 47 S. Ct. 207; Missouri P. R. Co. v. Porter, 273 U. S. 341, 71 L. ed. 672, 47 S. Ct. 383; Service Storage & Transfer Co. v. Virginia, 359 U. S. 171, 3 L. ed. 2d 717, 79 S. Ct. 714, or unduly burdensome on maritime activities or interstate commerce, Minnesota v. Barber, 136 U. S. 313, 34 L. ed. 455, 10 S. Ct. 862; Morgan v. Virginia, 328 U. S. 373, 90 L. ed. 1317, 66 S. Ct. 1050, 165 A. L. R. 574; Bibb v. Navajo Freight Lines, Inc., 359 U. S. 520, 3 L. ed. 2d 1003, 79 S. Ct. 962.

"In determining whether state regulation has been pre-empted by federal action, 'the intent to supersede the exercise by the State of its police power as to matters not covered by the Federal legislation is not to be inferred from the mere fact that Congress has seen fit to circumscribe its regulation and to occupy a limited field. In other words, such intent is not to be implied unless the act of Congress fairly interpreted is in actual conflict with the law of the State.' Savage v. Jones, 225 U. S. 501, 533, 56 L. ed. 1182, 1195, 32 S. Ct. 715. See also Reid v. Colorado, 187 U. S. 137, 47 L. ed. 108, 23 S. Ct. 92; Asbell v. Kansas,

209 U. S. 251, 52 L. ed. 778, 28 S. Ct. 485, 14 Ann. Cas. 1101; H. P. Welch Co. v. New Hampshire, 306 U. S. 79, 83 L. ed. 500, 59 S. Ct. 438; Maurer v. Hamilton, 309 U. S. 598, 84 L. ed. 969, 60 S. Ct. 726, 135 A. L. R. 1347.

"In determining whether the state has imposed an undue burden on interstate commerce, it must be borne in mind that the Constitution when 'conferring upon Congress the regulation of commerce, . . . never intended to cut the States off from legislating on all subjects relating to the health, life, and safety of their citizens, though the legislation might indirectly affect the commerce of the country. Legislation, in a great variety of ways, may affect commerce and persons engaged in it without constituting a regulation of it, within the meaning of the Constitution.' Sherlock v. Alling, 93 U. S. 99, 103, 23 L. ed. 819, 820; Austin v. Tennessee, 179 U. S. 343, 45 L. ed. 224, 21 S. Ct. 132; Louisville & N. R. Co. v. Kentucky, 183 U. S. 503, 46 L. ed. 298, 22 S. Ct. 95; Minnesota Rate Cases (Simpson v. Shepard), 230 U. S. 352, 57 L. ed. 1511, 33 S. Ct. 729, 48 L. R. A. N. S. 1151, Ann. Cas. 1916A 18; Boston & M. R. Co. v. Armburg, 285 U. S. 234, 76 L. ed. 729, 52 S. Ct. 336; Collins v. American Buslines, Inc., 350 U. S. 528, 100 L. ed. 672, 76 S. Ct. 582. But a state may not impose a burden which materially affects interstate commerce in an area where uniformity of regulation is necessary. Hall v. De Cuir, 95 U. S. 485, 24 L. ed. 547; Southern P. Co. v. Arizona, 325 U. S. 761, 89 L. ed. 1915, 65 S. Ct. 1515; Bibb v. Navajo Freight Lines, Inc., 359 U. S. 520, 3 L. ed. 2d 1003, 79 S. Ct. 962.

"Although verbal generalizations do not of their own motion decide concrete cases, it is nevertheless within the framework of these basic principles that the issues in the present case must be determined."

The dissenting opinion by Mr. Justice Douglas, Mr. Justice Frankfurter concurring, stated, at page 449:

> "Nor is this the rare case where state law adopts the standards and requirements of federal law and is allowed to exact a permit in addition to the one demanded by federal law. California v. Zook, 336 U. S. 725, 735, 93 L. Ed. 1005, 1012, 69 S. Ct. 841."

Further examining the Federal Tobacco Inspection Act, we find under Section 10:

> "It shall be unlawful . . . (c) for any person not an authorized inspector under this chapter, to issue a certificate or report stating the type, grade, or size or condition of any lot of tobacco to be in accordance with the standards of the United States therefor which is of such color, size, arrangement, or wording as to be mistaken for a certificate issued under this chapter, unless such certificate states in prominent letters in its heading that it is not issued under authority of the United States."

These certainly are not the words that exclude **any** action by any other persons or the State. Rather than exclude any certificate or tags, the statute makes it unlawful to issue one which purports to be a United States certificate or tag. The obvious implication is that the Act does not exclude other tickets disclosing the same information as to type, etc., if it is not of such appearance as to be that of a United States ticket.

Still further litigation has been decided which was directly concerned with the placing of tickets on tobacco for sale. **Lazar v. Benson,** 156 F. Supp. 259, held that United States Department of Agriculture regulations requiring warehousemen to use tickets to identify tobacco certified as from farms producing desirable varieties of

tobacco, so as to distinguish tobacco from undesirable varieties, were authorized under the Federal Act in order to prevent loss of tobacco export markets. In this situation, distinguishably different tickets were used.

Also in 1957, **Stroud v. Benson**, 155 F. Supp. 482, reversed on other grounds, 254 F. 2d 448, it was held that the Federal Tobacco Inspection Act which provided that tobacco warehousemen shall provide a place on warehouse ticket or label for the grade as determined by an authorized tobacco inspector, does not prohibit the disclosure of additional information on such warehouse tickets, and **striped tickets** to show tobacco as discount varieties does not violate the Federal Act.

A comparison of the definitions of Type 14 tobacco in the Georgia Act and the definition of Type 14 tobacco under the Federal Act is revealing:

> "Type 14 flue-cured leaf tobacco as used herein shall mean that flue-cured leaf tobacco grown in the traditional loose-leaf area which consists of the States of Georgia, Florida, and Alabama." (Georgia Laws, 1960, pages 214-227, inclusive, at page 216; Ga. Code Ann., Ch. 111-2.)
>
> "That type of flue-cured tobacco commonly known as Southern flue-cured or New Belt, of Georgia, Florida and Alabama, produced principally in the Southern section of Georgia, and to some extent in Florida and Alabama" (7 C. F. R., § 29.1100).

A mere reading shows an attempt on the part of Georgia to adopt the Federal definition and upon that premise require identification as to type. The differences in the definitions are negligible and of no consequence. Close examination discloses that the Georgia Act has simply adopted the Federal definition, with some minor changes in terminology, and is completely consistent with Section

3 of the Federal Act which directs that the Secretary is authorized to establish standards by which its type, grade, size, etc., may be determined, which standards shall be the official standards of the United States. Georgia has not attempted to set up a new definition, or standard, but adheres to that already defined and in common use by and in the United States.

The Federal Tobacco Inspection Act was enacted by the Congress to provide uniform standards of classification and inspection that the Congress determined to be imperative for the protection of producers and others engaged in commerce and the public interest in tobacco transactions, 7 U. S. C. A., § 511a. This was a recognition of the uncertainty in prices received by the growers of tobacco based upon the variation in grading methods utilized in the marketing of tobacco.

The Federal Act (Section 8, 7 U. S. C. A., 5119) imposes a duty upon warehousemen to provide space on warehouse tickets, tags or labels used by them for showing the grade of the lot of tobacco covered, as determined by an authorized tobacco inspection. After imposing the duty, the Secretary is authorized to prescribe the form in which the certification of grade is to be shown and further authorized to require a copy to be furnished to the Secretary. A mere reading of this requirement shows that the Congress stressed and placed great importance upon showing the grade of tobacco. No requirement as to labeling or tagging to show type is found in this section nor is there any requirement in the Act that type be shown on the label. This is emphasized by the language used in Section 10 (a), 7 U. S. C. A. 511 (1), which makes it unlawful to use the words "United States," "Government," or "Federal" in connection with or statement relating to the grades of tobacco when in fact the grade is not one of the grades of tobacco according to the standards of the United States.

B. Do complainants have standing to raise constitutional question? In the opinion below, the Court states that the Intervenor raised the question of whether these complainants may raise this constitutional issue. At the outset, let us state that this question is raised by both the State, the original defendant, and the Intervenor, by virtue of their motion to dismiss. This portion of the question was discussed in the brief of the Intervenor filed in the court below merely because of the division of questions in the preparation of the brief. Each of the appellants here raise this question and not merely the Intervenor alone.

We have previously pointed out that there is no one before this Court nor is there any evidence before this Court except by conjecture that anyone exists who is prevented from marketing tobacco classified under Federal Regulations as Type 14 in the State of Georgia by virtue of the Georgia Act.

The trend of the Federal Courts is to avoid, wherever possible, the destruction of State statutes upon the complaint of persons merely because they are affected in some regard by that statute. This is particularly true of Federal Equity Court and in situations where jurisdiction, as here, is entirely dependent upon 28 U. S. C. A. 1331. In **Matthews v. Rodgers**, 284 U. S. 521, 76 L. ed. 447, wherein Justice Stone said:

> "The scrupulous regard for the rightful independence of state governments, which should at all times actuate the Federal Courts, and a proper reluctance to interfere by injunction with their fiscal operations, require that such relief should be denied in every case where the asserted federal right may be preserved without it."

In the instant case, the State statute in question provided a right and a remedy administratively and within the State court for these complainants. They did not avail themselves of those rights and the Federal question now relied on was and would be preserved in such proceedings. In the case at bar, the effect of the statute complained of upon these complainants is indirect. The alleged effect of this Act is directed toward growers of other than Type 14 tobacco, none of whom are parties to this controversy. While it is true, as shown by the complainants and by the evidence, that an adverse financial result will affect the complainants, that effect is not only indirect, it is speculative and must result, not from the Act of the State of Georgia, but from the acts of others. These complainants must show, as they have not shown, that the natural result of the enforcement of this Act, in and of itself, precludes the introduction into commerce of tobacco grown in North Carolina and South Carolina. The Act itself does not preclude commerce, nor does it place an artificial barrier upon that commerce. It requires only that after coming to rest upon the warehouse floor in Georgia for the purpose of being marketed, that it be identified as to its type, which is understood to connote its place of origin. Before these complainants can be heard, to such a degree as to give them a standing to raise this question, they must show that the natural result is to prevent these shipments from coming into the State, and as has been shown, that result will come about only if and so long as the buyers of tobacco do not pay as much for that tobacco as they would pay for the same tobacco in markets elsewhere. In the case of Excello Corp. v. City of Chicago, 115 F. 2d 627, the Seventh Circuit Court of Appeals denied the right of a manufacturer of patented machines for the production of paper milk bottles to raise the constitutional question as to whether an ordinance of the City of Chicago prohibiting the use of

paper milk containers, was valid. The Court recognized that while that plaintiff, a non resident of the State of Illinois, would be adversely affected financially, it held that that result was "incidental, inconsequential and indirect." At page 629, the Court said:

> "Thus it is apparent that inevitable financial pecuniary damage is not the test of the sufficiency of plaintiff's interest, otherwise the right to sue might be extended indefinitely to parties far removed, such as workmen in plaintiff's factory whose wages are reduced or lost because of lack of realization of profits by their employer."

The Court said (Divisions 2 and 3):

> "This power of judicial determination (the power to declare unconstitutional) is delicate in character, one to be exercised with caution and care, and it may result in disapproval of Acts of the Legislative Department or of actions of the Executive Department, both coordinate branches of the government."

In **L'Hote v. City of New Orleans**, 177 U. S. 587, 44 L. Ed. 899, the Supreme Court of the United States refused to permit the owner of property to challenge the constitutionality of an ordinance of that city declaring that prostitutes would occupy houses only in a certain area, even though the plaintiff owned land in that area and the alleged result was diminution of the value of that land. Our Fifth Circuit Court of Appeals, with Chief Judge Joseph Hutcheson participating, in **Sproles v. Binford et al.**, 52 F. 2d 730, refused to permit the manufacturer of a motor vehicle to test the validity of a Texas statute governing the size of motor vehicles on its highways, even though its business would be wrecked by the enforcement of the Act.

In **Savage v. Jones**, 225 U. S. 501, 56 L. Ed. 1183, the Supreme Court did permit a Minnesota manufacturer of a stock feed to test the validity of an Indiana statute requiring him, the manufacturer, to place upon his original packages, a statement of its contents. There, however, the statute required some action in the foreign state by the manufacturer himself. Here, the statute requires action only of the local warehouseman within the state passing the Act.

In **Wallace v. Currin**, 95 F. 2d 856, affirmed by the Supreme Court in **Currin v. Wallace**, 306 U. S. 1, the Fourth Circuit Court of Appeals did permit tobacco warehousemen to test the validity of the Federal Tobacco Inspection Act. Significantly, however, they did not do so, based upon allegations which appear in this petition, as to loss of commerce but laid it on the basis that the complainant had the right to operate his business without complying with it and said that he should not be required to abandon what he thought was right. In the case at bar, the plaintiffs never contended that they thought the Act was wrong and were not standing upon such high judicial ground, but rather their complaint did have standing solely upon their damage, which damage would result only from the action of others and not as a direct and natural consequence of the Act itself.

The cases refusing to a plaintiff the standing to test the validity of an Act are collected in the **Excello** case, supra. In **Mass. v. Mellon**, 262 U. S. 447, 67 L. Ed. 1078, the Supreme Court of the United States announces the rule as follows:

> "The party who invokes the power must be able to show not only that the Statute is invalid, but that he has sustained, or is immediately in danger of sustaining, some direct injury as the result of its en-

forcement, and not merely that he suffers in some indefinite way in common with the people generally."

As to whether plaintiffs below have standing to raise a constitutional question, in **Federation of Labor v. McAdory**, 325 U. S. 450, 89 L. ed. 1725, 65 S. Ct. 1384, this Court has stated very briefly the principle under which such question must be answered. The Court said on page 467:

> "We can be asked to condemn a state statute as in conflict with national legislation only if the conflict is clearly shown, . . . and only by those who show that they are adversely affected by the conflict with national power."

And in **Premier-Pabst Sales Co. v. Grosscup et al.**, 298 U. S. 226, 80 L. ed. 1155, 56 S. Ct. 754, the Court, citing **Heald v. District of Columbia**, 259 U. S. 114,

> "One who would strike down a state statute as obnoxious to the Federal Constitution must show that the alleged unconstitutional feature injures him."

The complaint below showed that the appellees were operating warehouses on two of the twenty-three tobacco markets in Georgia, that the Act itself required of appellees exactly what was required of all twenty-three markets. The evidence showed that at least five of the twenty-three markets, including the two in which appellees operate, were affected in practical operation exactly as were complainants. The evidence demonstrated and the conclusion was demanded that any injury to the complainants resulted not from the Act alone but from the Act in conjunction with the mental attitude of producers and the purchasing action of buyers.

Complainants below sought to show injury through loss of business, or plainly speaking, through loss of sales with

a resultant loss of commissions, a pecuniary injury. It is the contention of the appellants that this is not such injury as to confer standing to complainants below to challenge the constitutionality of the Georgia Act. It was the finding of the court below that:

> ". . . compliance with these provisions has resulted in financial losses to the plaintiffs as well as to the growers from other states who desired to market their tobacco at the plaintiffs' warehouses. This being so, the plaintiffs may bring and maintain the action."

This would seem to be in conflict with the holding of **Excello Corp. v. City of Chicago**, supra, which held that financial pecuniary damage is not the test of the sufficiency of plaintiff's interest. In **Benson et al. v. Schofield et al.**, 236 F. 2d 719, 98 U. S. App. D. C. 424, certiorari denied, 352 U. S. 976, 1 L. ed. 2d 324, 77 S. Ct. 363, the Court ruling upon pecuniary damage as a basis of conferring standing:

> "Mere loss of income in consequence of action of governmental or economic disadvantage, by itself, constitutes damnum absque injuria which does not confer standing."

In a case which challenged the Federal Tobacco Inspection Act, **Wallace v. Currin**, 95 F. 2d 856, the Court, while later sustaining on other grounds the right of the plaintiff there to bring the suit, had this to say concerning plaintiffs' contention that they as warehousemen had standing to question the constitutionality of that Act because of loss of profits:

> "Coming to the first question presented by the appeal, i. e. the standing of complainants to maintain the suit, it is difficult to see that they have sustained, or can sustain, any substantial damage as a result of the enforcement of the act. The matter of difference

> in prices on which they rely has little probative value, as it may have been due to a variety of circumstances; and we do not see how correct grading can result in otherwise than in better prices for the growers and consequently in increased commissions for the warehousemen."

As a further basis for sustaining the appellees' standing to challenge the statute, the court below said:

> "The provisions which the plaintiffs assail directly bear upon them in the operation of their businesses. It is upon them that the act imposes the duty of placing the tags, white or colored, upon tobacco."

Plaintiffs had complied with the Act in every way since its enactment, and had procured tags and attached them to the sheets of tobacco for two sale days before bringing the action below. It is submitted that their sole basis for bringing the action was pecuniary loss, and not because of any oppressive duty imposed upon them in complying with the Act. § 29.77 of Regulations of the Secretary of Agriculture under the Tobacco Inspection Act of August 23, 1935, Amended Regulations July 31, 1959, provides:

> "A mandatory inspection ticket, . . . shall be provided by each auction warehouseman on a designated market to cover each lot of tobacco offered for sale at auction by him on such market."

It has been neither alleged or contended that such federally imposed duty has been detrimental to complainant's below. Why, then, should a similar tagging requirement be oppressive when imposed by the State?

We respectfully contend that even though some financial damage might have accrued to the complainants in this case, as an **indirect result** of the enforcement of this

Act, that any damage was just that—indirect, inconsequential, incidental. If these complainants have standing in this case, so do motel operators, so do bankers who clear the checks, so do filling station operators and restaurants, and, as in the **Excello** case, supra, so do laborers in the warehouse. Applying the zealous recognition in **Mathews v. Rodgers**, supra, for the protection of the independence of the states by the Federal Courts, noting the continued existence and preservation of the federal question within the framework of the State Courts, we are driven to the conclusion that the Court of Equity below should have denied the relief sought.

At the outset in the court below the parties entered into a stipulation (Stipulation No. 4, R. 27), which, as we have previously suggested, showed that the Georgia Act was in its practical application a proper adoption of the Federal Regulation as to type. Additionally, that stipulation shows that these complainants have no standing in this Court. While it is true that the lower court held that a stipulation could not fix or change the law (R. 157), the Court observed that parties:

> ". . . may waive the benefit of constitutional or statutory provisions."

The sole basis of the basis of the decision below that the Georgia Act was unconstitutional is primarily planted on the lower court's determination that there is a conflict between the Georgia Act and the Federal definition, and that since there "**may**" be persons who would be illegally precluded from marketing their Type 14 tobacco under a white tag on Georgia markets, the Act must be stricken down. This stipulation, though, shows that none of those people are before this Court and that these complainants are not included in those "possible" persons, nor are any of their customers upon which they base their standing in this Court, included among those "possible" persons.

As a last authority on the questions herein presented, appellants would like to respectfully refer the Court to the recent case of **United States v. Raines**, 362 U. S. 17, 4 L. ed. 2d 524, 80 S. Ct. 519, a portion of the opinion of which is considered very pertinent to the questions here. At page 20:

> "The very foundation of the power of the federal courts to declare Acts of Congress unconstitutional lies in the power and duty of those courts to decide cases and controversies properly before them. This was made patent in the first case here exercising that power—'the gravest and most delicate duty that this Court is called on to perform.' Marbury v. Madison (U. S.), 1 Cranch. 137, 177-180, 2 L. ed. 2d 60, 73, 74. This Court, as is the case with all federal courts, 'has no jurisdiction to pronounce any statute, either of a State or of the United States, void, because irreconcilable with the Constitution, except as it is called upon to adjudge the legal rights of litigants in actual controversies. In the exercise of that jurisdiction it is bound by two rules, to which it has rigidly adhered, one, never to anticipate a question of constitutional law in advance of the necessity of deciding it; the other never to formulate a rule of constitutional law broader than is required by the precise facts to which it is to be applied.' Liverpool, N. Y. & P. S. S. Co. v. Commissioners of Emigration, 113 U. S. 33, 39, 28 L. ed. 899, 901, 5 S. Ct. 352. Kindred to these rules is the rule that one to whom application of a statute is constitutional will not be heard to attack the statute on the ground that impliedly it might also be taken as applying to other persons or other situations in which its application might be unconstitutional (citing numerous cases). . . . In Barrows v. Jackson, 346 U. S. 249, 97 L. ed. 1586, 73 S. Ct. 1031, this Court developed various reasons for this rule. Very significant is the

incontrovertible proposition that it 'would, indeed, be undesirable for this Court to consider every conceivable situation which might possibly arise in the application of complex and comprehensive legislation.' Id. 346 U. S. at 256. The delicate power of pronouncing an Act of Congress unconstitutional is not to be exercised with reference to hypothetical cases thus imagined. . . ."

It is respectfully submitted that the appellees (complainants below) are not in a position to raise the constitutional questions.

CONCLUSION.

For the reasons stated, it is respectfully submitted that the judgment of the court below should be reversed and the injunction dissolved.

Respectfully submitted,

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EXHIBIT A.

The Tobacco Inspection Act.

[Public—No. 314—74th Congress].

[H. R. 8026].

AN ACT

To establish and promote the use of standards of classification for tobacco, to provide and maintain an official tobacco inspection service, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That when used in this Act—

(a) "Person" includes partnerships, associations, and corporations, as well as individuals.

(b) "Secretary" means the Secretary of Agriculture of the United States.

(c) "Inspector" means any person employed, licensed, or authorized by the Secretary to determine and certify the type, grade, condition, or other characteristics of tobacco.

(d) "Sampler" means any person employed, licensed, or authorized by the Secretary to select, tag, and seal official samples of tobacco.

(e) "Weigher" means any person employed, licensed, or authorized by the Secretary to weigh and certify the weight of tobacco.

(f) "Tobacco" means tobacco in its unmanufactured form.

(g) "Auction market" means a market or place to which tobacco is delivered by the producers thereof, or their agents, for sale at auction through a warehouseman or commission merchant.

(h) Words in the singular form shall be deemed to import the plural form when necessary.

(i) "Commerce" means commerce between any State, Territory, or possession, or the District of Columbia, and any place outside thereof; or between points within the same State, Territory, or possession or the District of Columbia, but through any place outside thereof; or within any Territory or possession, or the District of Columbia. For the purposes of this Act (but not in any wise limiting the foregoing definition) a transaction in respect to tobacco shall be considered to be in commerce if such tobacco is part of that current of commerce usual in the tobacco industry whereby tobacco or products manufactured therefrom are sent from one State with the expectation that they will end their transit, after purchase, in another, including, in addition to cases within the above general description, all cases where purchase or sale is either for shipment to another State or for manufacture within the State and the shipment outside the State of the products resulting from such manufacture. Tobacco normally in such current of commerce shall not be considered out of such current through resort being had to any means or device intended to remove transactions in respect thereto from the provisions of this Act. For the purpose of this paragraph the word "State" includes Territory, the District of Columbia, possessions of the United States, and foreign nations.

Sec. 2. That transactions in tobacco involving the sale thereof at auction as commonly conducted at auction markets are affected with a public interest; that such transactions are carried on by tobacco producers generally and by persons engaged in the business of buying and selling tobacco in commerce; that the classification of tobacco according to type, grade, and other characteristics affects the prices received therefor by producers; that without uni-

form standards of classification and inspection the evaluation of tobacco is susceptible to speculation, manipulation, and control, and unreasonable fluctuations in prices and quality determinations occur which are detrimental to producers and persons handling tobacco in commerce; that such fluctuations constitute a burden upon commerce and make the use of uniform standards of classification and inspection imperative for the protection of producers and others engaged in commerce and the public interest therein.

Sec. 3. That the Secretary is authorized to investigate the sorting, handling, conditioning, inspection, and marketing of tobacco from time to time, and to establish standards for tobacco by which its type, grade, size, condition, or other characteristics may be determined, which standards shall be the official standards of the United States, and shall become effective immediately or upon a date specified by the Secretary: Provided, That the Secretary may issue tentative standards for tobacco prior to the establishment of official standards therefor, and he may modify any standards established under authority of this Act whenever, in his judgment, such action is advisable.

Sec. 4. That the Secretary is authorized to demonstrate the official standards; to prepare and distribute, upon request, samples, illustrations, or sets thereof; and to make reasonable charges therefor: Provided, That in no event shall charges be in excess of the cost of said samples, illustrations, and services so rendered.

Sec. 5. That the Secretary is authorized to designate those auction markets where tobacco bought and sold thereon at auction, or the products customarily manufactured therefrom, moves in commerce. Before any market is designated by the Secretary under this section he shall determine by referendum the desire of tobacco grow-

ers who sold tobacco at auction on such market during the preceding marketing season. The Secretary may at his discretion hold one referendum for two or more markets or for all markets in a type area. No market or group of markets shall be designated by the Secretary unless two-thirds of the growers voting favor it. The Secretary shall have access to the tobacco records of the Collector of Internal Revenue and of the several collectors of internal revenue for the purpose of obtaining the names and addresses of growers who sold tobacco on any auction market, and the Secretary shall determine from said records the eligibility of such grower to vote in such referendum, and no grower shall be eligible to vote in more than one referendum. After public notice of not less than thirty days that any auction market has been so designated by the Secretary, no tobacco shall be offered for sale at auction on such market until it shall have been inspected and certified by an authorized representative of the Secretary according to the standards established under this Act, except that the Secretary may temporarily suspend the requirement of inspection and certification at any designated market whenever he finds it impracticable to provide for such inspection and certification because competent inspectors are not obtainable or because the quantity of tobacco available for inspection is insufficient to justify the cost of such service: Provided, That, in the event competent inspectors are not available, or for other reasons, the Secretary is unable to provide for such inspection and certification at all auction markets within a type area, he shall first designate those auction markets where the greatest number of growers may be served with the facilities available to him. No fee or charge shall be imposed or collected for inspection or certification under this section at any designated auction market. Nothing contained in this Act shall be construed to prevent transactions in tobacco at markets not designated by the Secretary

or at designated markets where the Secretary has suspended the requirement of inspection or to authorize the Secretary to close any market.

Sec. 6. That the Secretary, independently or in cooperation with other branches of the Government, State agencies, or persons, whether operating in one or more jurisdictions, is authorized to employ and/or license competent persons as samplers to take official samples of tobacco, or as weighers to weigh and certify the weight of tobacco, or as inspectors of tobacco to determine and certify, upon the request of the owner or other financially interested person, the type, grade, weight, condition, and/or such other facts as the Secretary may deem necessary.

The Secretary is authorized to fix and collect such fees or charges in the administration of this section as he may deem reasonable, and the moneys collected, except as provided in this section, shall be deposited in the Treasury of the United States to the credit of miscellaneous receipts. Fees or charges collected under an agreement with a State, municipality, or person, or by an individual licensed to inspect or weigh or sample tobacco under this Act, may be disposed of in accordance with the terms of such agreement or license. Charges for expenses for travel and subsistence incurred by inspectors or weighers or samplers employed by the Secretary when required to be paid by the applicant for service, may be credited to the appropriation, or any other funds authorized in this Act from which they were paid.

This section is intended merely to provide for the furnishing of services upon request of the owner or other person financially interested in tobacco to be sampled, inspected, or weighed and shall not be construed otherwise.

Sec. 7. That the Secretary shall provide for such reinspection or appeal inspection of tobacco as he may deem

necessary for the confirmation or reversal of certificates issued under this Act. Each inspection certificate issued under this Act, unless invalidated or superseded in accordance with the regulations of the Secretary, shall be received in all courts and by all officers and employees of the United States as prima facie evidence of the truth of the statements therein contained.

Sec. 8. That warehousemen shall provide space on warehouse tickets or other tags or labels used by them for showing the grade of the lot covered thereby as determined by an authorized tobacco inspector under this Act. The Secretary may prescribe, by regulation, the form in which such certification of grade shall be shown, and may require that a copy of such warehouse ticket, tag, or label shall be furnished to the Secretary.

Sec. 9. That the Secretary is authorized to collect, publish, and distribute, by telegraph, mail, or otherwise without cost to the grower, timely information on the market supply and demand, location, disposition, quality, condition, and market prices for tobacco.

Sec. 10. It shall be unlawful—

(a) For any person to use the words "United States", "Government", or "Federal", or any abbreviation thereof, in, or in connection with, any statement relating to the grade of tobacco when such grade is not, in fact, one of the grades for tobacco according to the standards of the United States.

(b) For any person falsely to make, issue, alter, forge, or counterfeit, or aid, cause, procure, or assist in or be a party to the false making, issuing, altering, forging, or counterfeiting of any certificate, stamp, tag, seal, label, or other writing purporting to be issued or authorized under this Act.

(c) For any person, not an authorized inspector under this Act, to issue a certificate or report stating the type, grade, size, or condition of any lot of tobacco to be in accordance with the standards of the United States therefor which is of such color, size, arrangement, or wording as to be mistaken for a certificate issued under this Act, unless such certificate states in prominent letters in its heading that it is not issued under authority of the United States.

(d) For any person employed, designated, or licensed by the Secretary as an inspector, sampler, or weigher of tobacco under this Act knowingly to inspect, sample, or weigh improperly, or to issue any false certificate under this Act, or to accept money or other consideration, directly or indirectly, for any neglect or improper performance of duty as an inspector, sampler, or weigher.

(e) For any person improperly to influence or to attempt improperly to influence or forcibly to assault, resist, impede, or interfere with any inspector, sampler, weigher, or other person employed, designated, or licensed by the Secretary in the execution of his duties under this Act: Provided, however, That nothing herein shall operate to prevent the owner of tobacco from appealing or protesting, in accordance with regulations of the Secretary, the grade certified for his tobacco.

(f) For any person falsely to represent or otherwise indicate that he is authorized by the Secretary to inspect, sample, or weigh tobacco under this Act.

(g) For any person to substitute, or attempt to substitute, following inspection or sampling or weighing under this Act, other tobacco for tobacco actually inspected or sampled or weighed, or in the case of tobacco inspected in auction warehouses for any person not so authorized by

the Secretary to remove any certificate of grade from any lot of tobacco prior to the sale of such lot.

(h) For any person falsely to represent that tobacco has been inspected, sampled, or weighed under this Act; or knowingly to have made any false representation concerning tobacco inspected under this Act; or knowing that tobacco is to be offered for inspection or sampling under this Act to load, pack, or arrange such tobacco in such manner as knowingly to conceal foreign matter or tobacco of inferior grade, quality, or condition; or for any person knowing that tobacco has been so loaded, packed, or arranged, to offer it for inspection or sampling without disclosing such knowledge to the inspector or sampler before inspection or sampling.

(i) For any person willfully to alter an official sample of tobacco by removing or plucking leaves or otherwise, or for any person knowing that an official sample of tobacco has been so altered, thereafter to represent such sample as an official sample.

Sec. 11. The Secretary is authorized to publish the facts regarding any violation of this Act.

Sec. 12. That any person violating any provision of sections 5 and 10 of this Act shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than $1,000, or imprisoned not more than one year, or both.

Sec. 13. In construing and enforcing the provisions of this Act; the act, omission, or failure of any agent, officer, or other person acting for or employed by an association, partnership, corporation, or firm, within the scope of his employment or office, shall be deemed to be the act, omission, or failure of the association, partnership, corporation, or firm, as well as that of the person.

Sec. 14. The Secretary is authorized to make such rules and regulations and hold such hearings as he may deem

necessary to effectuate the purposes of this chapter and may cooperate with any other Department or agency of the Government; any State, territory, district, or possession, or department, agency, or political subdivision thereof; purchasing and consuming organizations, boards of trade, chambers of commerce, or other associations of business men or trade organizations; or any person, whether operating in one or more jurisdictions in carrying on the work herein authorized; and he shall have the power to appoint, suspend, remove, and fix the compensation of all officers, employees, and licensees not in conflict with existing law. The Secretary is authorized to make such expenditures for rent outside of the District of Columbia, printing, binding, telegrams, telephones, books of reference, publications, furniture, stationery, office and laboratory equipment, travel, tobacco for use in preparing and demonstrating standards, and other supplies and expenses, including reporting services, as shall be necessary to the administration of this chapter in the District of Columbia and elsewhere, and as may be appropriated for by Congress; and there is authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, such sums as may be necessary for administering this chapter.

Sec. 15. That in carrying on the work herein authorized, the Secretary, or any officer or employee designated by him for such purpose, shall have power to hold hearings, administer oaths, sign and issue subpenas, examine witnesses, and require the production of books, records, accounts, memoranda, and papers. Upon refusal by any person to appear, testify, or produce books, records, accounts, memoranda, and papers in response to a subpena, the proper United States district court shall have power to compel obedience thereto.

Sec. 16. That if any provision of this Act or the application thereof to any person or circumstance is held invalid,

the validity of the remainder of the Act and of the application of such provision to other persons and circumstances shall not be affected thereby.

Sec. 17. That any duties devolving upon the Secretary of Agriculture by virtue of the provisions of this Act may with like force and effect be executed by such officer or officers, agent or agents, of the Department of Agriculture as the Secretary may designate for the purpose.

Sec. 18. That this Act may be cited as "The Tobacco Inspection Act."

Approved, August 23, 1935. As amended, October 28, 1949.

EXHIBIT "B".

State of Georgia.

Office of Secretary of State.

I, Ben W. Fortson, Jr., Secretary of State of the State of Georgia, do hereby certify that the fourteen (14) pages of photographed matter hereto attached contains a true and correct copy of Georgia Laws, 1960, Act No. 557, H. B. 717, approved by the Governor on March 7, 1960; all as the same appears of file and record in this office.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of my office, at the Capitol, in the City of Atlanta, this 30th day of August, in the year of our Lord One Thousand Nine Hundred and Sixty-one, and of the Independence of the United States of America the One Hundred and Eighty-sixth.

Ben W. Fortson, Jr.,

(Seal) Secretary of State.

AGRICULTURE—REGULATION OF SALES OF FLUE-CURED TOBACCO.

Code Chapter 111-2 Repealed.

No. 557 (House Bill No. 717).

An Act to regulate the sale of flue-cured leaf tobacco in this State so as to enable producers to have an adequate time to properly cure, prepare, and market flue-cured leaf tobacco; to provide a means of identifying all types of flue-cured leaf tobacco sold in this State and a procedure connected therewith, to provide for the licensing and bonding of operators of flue-cured leaf tobacco and a procedure connected therewith and a license fee; to provide for the bonding of operators of tobacco warehouses, the amount thereof, and the conditions of such bond; to provide the maximum charges and expenses of handling and selling leaf tobacco in this State; to provide that statements of charges shall be submitted by the warehouseman to the seller of tobacco; to provide for records to be kept by licensee to show the origin and amount of tobacco sold by him and a procedure connected therewith; to provide for the duties of the Commissioner of Agriculture in compiling statistics relative to the sale of leaf tobacco; to create an advisory board and to provide its composition, the duties of the members thereof and their compensation; to provide for the setting of the opening date of the tobacco marketing season in this State and to provide a procedure connected therewith; to provide a minimum tobacco marketing season in this State and a procedure for the ceasing of operations of a warehouse prior to the expiration of the maximum selling season; to provide the maximum rate of sales of leaf tobacco by warehousemen; to provide a means of identification of flue-cured leaf tobacco as to types sold in this State and a procedure connected therewith; to provide a penalty for violating

the provisions of section 13 by a licensee; to provide for identification tags for use in marketing tobacco in this state; to prohibit the mixing of type 14 tobacco with any other type of tobacco and to prescribe a means for the sale of such mixed tobacco; to provide for the registration of purchasers of tobacco for resale and a procedure connected therewith; to provide for the duties of Commissioner of Agriculture in conjunction with the administration and enforcement of this Act; to provide for certification by weighers for the weighing of tobacco at each warehouse and a procedure connected therewith; to provide for the revocation or suspension of any license or registration issued thereunder after notice and hearing and a procedure connected therewith; to provide for injunctions and a procedure connected therewith; to provide for rules and regulations; to provide for judicial review of administrative determinations or decisions and a procedure connected therewith; to provide for appeals and a procedure connected therewith; to provide for the impounding of records and commodities during investigation for violations of this Act and rules and regulations promulgated hereunder; to repeal Code Chapter 111-2 relating to statistics on leaf tobacco; to repeal an Act approved March 28, 1935 (Ga. L. 1935, p. 376), fixing a maximum charge for selling and handling leaf tobacco; to repeal an Act approved March 9, 1955 (Ga. L. 1955, p. 589), relating to the sale of flue-cured leaf tobacco; to define terms; to repeal conflicting laws; and for other purposes.

Be it enacted by the General Assembly of Georgia:

Intent.

Section 1. It is the intent and purpose of this Act to enable producers to have sufficient time to properly cure, prepare and have an adequate time to market their flue-cured tobacco in an orderly manner and to provide a

means of identification of types of flue-cured leaf tobacco sold in this State to the end that all purchasers thereof may be assured of the positive identification of tobacco sold in this State. It is found by the General Assembly that it is essential that the provisions provided in this Act are necessary to the proper marketing and identification of flue-cured leaf tobacco. Type 14 flue-cured leaf tobacco as used herein shall mean that flue-cured leaf tobacco grown in the traditional loose-leaf area which consists of the State of Georgia, Florida, and Alabama.

Auction licenses.

Section 2. No person real or corporate shall operate, hold or conduct an auction sale for the sale of flue-cured leaf tobacco within this State without having first obtained a license for the year in which the sale is made from the Commissioner. The license shall be for the calendar year and the license fee shall be $10.00 per each calendar year and shall expire on December 31 of each year and be subject to renewal under such rules and regulations as the Commissioner shall prescribe.

Same, bonds.

Section 3. As a prerequisite to the issuance of a license under the provisions of this Act, each applicant shall produce evidence to the Commissioner that he has in force for the calendar year for which license is sought a bond issued by a corporate entity authorized to do business in this State in the penal sum of $10,000.00. Such information shall show that the bond is in full force and effect and shall remain of full force and effect during the calendar year for which the license is sought. The bond shall be conditioned upon the licensee performing all the duties imposed upon him by law and the accounting for the proceeds of all flue-cured leaf tobacco received by him for sale and sold by him.

Charges by auction warehousemen.

Section 4. The maximum charges and expenses of handling and selling leaf tobacco by warehousemen licensed under this Act shall not exceed the following schedule, to-wit:

For auction fees, 15¢ on all piles or sheets of one hundred (100) pounds or less and twenty-five cents (25¢) on all piles or sheets over one hundred (100) pounds. For weighing and handling, ten cents (10¢) per pile or sheet for all piles or sheets of one hundred (100) pounds or less and ten cents (10¢) for each additional one hundred (100) pounds. For commissions on the gross sales of leaf tobacco in said warehouses not to exceed two and one-half per cent (2½%) of said gross sales.

Same, statements.

Section 5. The licensee of each and every warehouse shall render to each seller of tobacco of his warehouse an itemized statement plainly stating the amount charged for weighing and handling, the amounts charged for auction fees, and the amounts charged for commission on each sale.

Warehouse records, reports, etc.

Section 6. Each licensee shall keep a correct daily account of the number of pounds of leaf tobacco sold upon the floor of his warehouse. On or before Monday of each week, the licensee shall make a statement under oath of all of the tobacco sold upon the floor of his warehouse during the preceding week and shall transmit each report to the Commissioner. The report shall be so arranged and classified as to show the number of pounds of tobacco sold for producers, the number of pounds sold for dealers, and the number of pounds resold by the licensee for his own account or for the account of some other warehouse or licensee. In addition thereto each

licensee shall indicate the number of pounds of type 14 flue-cured leaf tobacco sold upon the floor of his warehouse for producers thereof and the number of pounds of type 14 flue-cured leaf tobacco sold by persons other than producers upon the floor of his warehouse. The licensee shall report the total number of pounds of other than type 14 flue-cured leaf tobacco sold for producers and persons other than producers. In addition thereto, each licensee shall make such additional reports as shall be prescribed by the Commissioner.

Records by Commissioner of Agriculture.

Section 7. The Commissioner shall cause to be kept and compiled the information submitted to him as to the sales of tobacco in this State. He shall cause such records to be kept in a manner so as to show the number of pounds of type 14 tobacco sold by each warehouse as well as the number of pounds of other than type 14 tobacco sold by each warehouse. He shall cause such records to be kept in a manner so as to show separately the number of pounds of type 14 tobacco and other types sold by producers and the number of pounds of each type of tobacco resold. The Commissioner of Agriculture is authorized to cause such information to be published in a manner that he deems most beneficial.

Advisory Board.

Section 8. To aid in the administration of this Act, there is hereby created an Advisory Board to be composed of nine (9) members. Three (3) members are to be members of the House of Representatives to be appointed by the Speaker of the House, and two (2) members are to be members of the Senate to be appointed by the President of the Senate. The members of the General Assembly shall be appointed from those members who are tobacco producers or in the absence of such producers in the General Assembly such members may

be appointed from the members of the General Assembly who represent the flue-cured leaf tobacco producing counties and districts of this State. One (1) member shall be the Commissioner of Agriculture, ex officio, or his representative, who shall be Chairman of the Board. One (1) member shall be a flue-cured leaf tobacco producer to be appointed by the Commissioner of Agriculture. One (1) member shall be the President of the Georgia Farm Bureau Federation, or his representative. One (1) member shall be a member of the Georgia Flue-Cured Tobacco Warehousemen's Association to be appointed by the President of that Association. The appointive members shall serve at the pleasure of the appointing officer. The members of the General Assembly shall receive the per diem and expense allowance provided for committee work of the General Assembly and such sums shall be paid from the funds appropriated for the operation of the General Assembly. The other appointive members of the Board shall be compensated in the amount of $15.00 per day for each day in attendance of the duties of the Board and shall be reimbursed for the necessary expenses incurred in the performance of their duties from the funds of the Department of Agriculture. The Commissioner shall be reimbursed for his expenses incurred in the performance of his duties. The members of the Board shall not receive the per diem provided herein for more than seven (7) days per year.

Same, meetings, etc.

Section 9. The Board shall meet in June of each year, or upon call of the Chairman, to survey the condition of the tobacco crop and recommend an opening date of the marketing season. The Chairman shall determine the time and place of the meeting. The Board shall recommend to the Commissioner a date for the opening of the tobacco marketing season. If the Commissioner approves

the opening date or if he deems it necessary for any other reason, he shall cause one or more members of the Board to attend the meeting of the Board of Governors of the Bright Belt Warehouse Association or its successors to make known the recommendation as to the opening of the marketing season in Georgia. If the Board of Governors of the Bright Belt Warehouse Association shall disapprove the recommended date or shall indicate an opening date for the tobacco marketing season in Georgia that is not in accordance with nor agreeable to the Tobacco Advisory Board or the Commissioner, the Commissioner shall determine the opening date of the tobacco marketing season in this State. If any licensee shall hold a sale prior to the date determined by the Commissioner, the license of the licensee shall stand revoked and shall not be reinstated or reissued in the calendar year of the revocation. The revocation provided herein shall be in addition to the other penalties provided for the violation of this Act. It is the intent and purpose of this section to provide a procedure for the fixing of the opening date of the tobacco marketing season and to place the final authority to fix said date in the Commissioner of Agriculture.

Marketing season.

Section 10. The flue-cured leaf tobacco marketing season shall continue for a minimum of twenty-seven (27) selling days after the opening date. The operating day of each flue-cured leaf tobacco warehouse shall not exceed five (5) actual selling hours and operating week of each such warehouse shall be limited to five (5) actual selling days, provided that no sale shall be held on Saturday or Sunday.

Same.

Section 11. If any warehouse has two (2) successive selling days during which the actual selling time is not

more than one (1) hour each day, then that particular warehouse shall be permitted to cease its operations but not before two (2) days have passed after the days that the actual selling time has not exceeded one (1) hour per day. The Commissioner may authorize a warehouse to cease operations at an earlier date than that provided herein when the Commissioner determines that the ceasing of operations by the warehouse is in the best interest of the marketing of tobacco.

Maximum sales.

Section 12. The maximum rate of sales at any such warehouse shall not exceed four hundred fifty (450) baskets during any one (1) hour nor shall the rate of sales during any one (1) day or week exceed four hundred and fifty (450) baskets per hour.

Tags for type 14 tobacco.

Section 13. (A) As an aid in providing positive identification of type 14 flue-cured leaf tobacco, it shall be the duty of each licensee to furnish white identification tags to identify type 14 tobacco. It shall be the duty of each licensee to cause such white identification tags to be placed upon each sheet of type 14 tobacco received in his warehouse for sale by requiring that producers, at the time of the receipt of tobacco in the warehouse submit proof of the origin of the tobacco to be sold. No licensee shall receive from any producer any tobacco for sale unless the licensee receives proof in the form of marketing cards, or other identification measures issued by the United States Department of Agriculture so as to definitely establish the origin of the tobacco. The licensee shall cause to be placed upon each sheet of type 14 tobacco a white sheet ticket that shall remain upon the sheet of tobacco at all times after receipt in the warehouse until after the sale of the sheet of tobacco and shall cause such ticket to have a carbon copy of the same

color that shall remain with the sheet of tobacco at all times subsequent to sale, as well as prior to the sale, that the tobacco remains in this State.

(B) Each licensee shall cause to be placed upon each sheet of other than type 14 tobacco received by him for sale, at the time of the receipt thereof, a colored identification tag of a color prescribed by the Commissioner that shall be attached to and shall remain in a conspicuous place at or near the top of the sheet of tobacco in such manner as to show to any person who desires to ascertain the type of tobacco offered for sale, or held for sale, that the tobacco is other than type 14. It shall be the duty of each licensee to ascertain at the time of the receipt of the tobacco to ascertain from producers or others the origin of the tobacco offered for receipt and to place the appropriate tag upon the tobacco so as to indicate the type.

(C) Each licensee receiving tobacco from persons other than producers for sale shall require that the origin of the tobacco be proven to his satisfaction so as to enable the licensee to properly identify the type of tobacco.

(D) Any licensee who shall indicate or permit to be indicated upon his premises any tobacco as type 14 when, in fact, such tobacco is not type 14 or any licensee who shall violate the provisions of this section shall be guilty of a felony and upon conviction thereof shall be punished by imprisonment of not less than one year nor more than five years and shall be subject to a fine of not more than $5,000.00 or both such fine and imprisonment.

(E) It is the intent and purpose of this section to provide a means to positively identify type 14 tobacco and to require that types other than type 14 be identified and marketed in such manner as to indicate the type to

any person seeking to ascertain the type of tobacco offered for sale in this State.

Identification tags.

Section 14. It shall be the duty of each licensee to provide identification tags of the color prescribed by the Commissioner for the use in marketing tobacco in his warehouse. Each licensee shall submit proof to the Commissioner prior to the opening of the marketing season, at a time prescribed by the Commissioner, of each year of an adequate supply of the identification tags required for the operation of his warehouse during the subsequent marketing season. Identification tags shall be of the size, color, number of carbon copies, shape and provide for information as shall be prescribed by the Commissioner.

Resales of tobacco.

Section 15. Any person who shall purchase tobacco at auction for resale shall cause the tobacco so purchased to retain its identity as to type. Any person who shall mix type 14 tobacco with any other type of tobacco and who shall offer such mixed tobacco for sale shall cause such tobacco to be marketed and identified as other than type 14 tobacco. It shall be the duty of each purchaser for resale to retain the original identification ticket of each sheet of tobacco so purchased or a copy thereof and submit such sheets to the warehouse as a means of identification when the tobacco is offered for resale.

Same. licensing.

Section 16. It shall be unlawful for any person to purchase tobacco for resale without having first registered with the Commissioner of Agriculture. There shall be no fee for such registration and the Commissioner is authorized to revoke, suspend or cancel such registration after notice and hearing for any violation of this Act or any rule or registration promulgated hereunder.

Inspections.

Section 17. The Commissioner, himself or through his agent, is authorized to inspect the premises of each licensee as often as he shall deem necessary. It shall be the duty of each licensee to cause to be kept records that shall be open to inspection by the Commissioner in such manner as to accurately show the origin and disposition of each type of flue-cured leaf tobacco.

Certified weighers.

Section 18. It shall be the duty of each licensee to provide a certified public weigher for the weighing of tobacco upon his premises and it shall be unlawful for any person to weigh tobacco for sale who is not a certified public weigher.

Enforcement of Act.

Section 19. It shall be the duty of the Commissioner to enforce the provisions of this Act and to utilize any employee of the Department of Agriculture in the performance of his duties hereunder. The Commissioner is authorized to revoke or suspend any license or registration issued hereunder after notice and hearing before the Commissioner.

Injunctions.

Section 20. In addition to the remedies provided herein and notwithstanding the existence of any other remedy of law and notwithstanding the pendency of any criminal prosecution, the Commissioner is authorized to apply to the Superior Court and such Court shall have jurisdiction upon hearing and for cause shown to grant a temporary or permanent injunction or an ex parte restraining order restraining or enjoining any person from violating or continuing to violate any of the provisions of this Act or for the failure or refusal to comply with the provisions of

this Act or any rule or regulation promulgated hereunder. Such injunction shall be issued without bond.

Rules.

Section 21. (a) Prior to adoption or change of any rules and regulations, the Commissioner shall promulgate the proposed promulgation or change and afford interested persons an opportunity to be heard and submit data and views orally or in writing.

(b) Any person with a real and substantial interest who is affected by a rule and regulation of the Commissioner who believes that the Commissioner in the promulgation or enforcement of such rule or regulation has exceeded the authority vested in him by the General Assembly under the Constitution of Georgia or United States shall have the right to petition the Commissioner for the repeal or rejection of such rule or regulation by pointing out in what respect and for what reasons he contends the rule to be unlawful or unconstitutional. The Commissioner is required to consider every such petition and afford the petitioner an opportunity to be heard within thirty (30) days, and, after argument, the Commissioner shall determine the merits of the petition. If the Commissioner decides in whole or in part in favor of the petitioner, the Commissioner shall take corrective measures within thirty (30) days after the hearing to give the petitioner relief in every respect from any unlawful or unconstitutional rule or regulation. The foregoing is expressly made an administrative remedy and every person affected by any rule or regulation or any Act of the Commissioner is required to exhaust this remedy before taking any other steps.

(c) All hearings before the Commissioner shall be stenographically reported and shall be available to any interested party upon payment of the stenographic cost.

Review.

Section 22. **(a) Procedure.** (1) Any person aggrieved by a final decision or determination in any matter in which a hearing is required or authorized by this Act or by the State or Federal Constitution is entitled to judicial review thereof, provided that the judicial review herein afforded shall be exclusive judicial remedy for review of such decision or determination.

(2) Proceedings for review shall be instituted by filing a petition in the superior court of the county in which the Commissioner resides, within thirty (30) days after service of the final decision or determination of the Commissioner. Copies of the petition shall be served upon the Commissioner and all other parties of record. The court in its discretion may permit other interested persons to intervene.

(3) The filing of the petition shall not stay enforcement of the Commissioner's decision; but the Commission may do so, or the reviewing court may order a stay upon such terms as it deems proper.

(4) Within thirty (30) days after service of the petition, or within such further time as the court may allow, the Commissioner shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding under review; but, by stipulation of all parties to the review proceeding; the record may be shortened. Any party unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional costs. The court may require or permit subsequent corrections or additions to the record when deemed desirable.

(5) If, before the date set for hearing, application is made to the court for leave to present additional evidence to the issues in the case, and it is shown to the satisfaction of the court that the additional evidence is material and that there were good reasons for failure to

present it in the proceeding before the Commissioner, the court may order that the additional evidence be taken before the Commissioner upon such conditions as the court may deem proper. The Commissioner may modify his findings and decision by reason of the additional evidence and shall file with the reviewing court, to become a part of the record, the additional evidence, together with any modification or new findings or decision.

(b) Scope of review. (1) The review shall be conducted by the court without a jury and shall be confined to the record, except that in cases of alleged irregularities in procedure before the Commissioner, not shown in the record, testimony thereon may be taken in the court. The court shall, upon request, hear oral argument and receive written briefs.

(2) The court may affirm the decision of the Commissioner or remand the case for further proceedings before the Commissioner; or it may reverse or modify the decision or compel action unlawfully withheld, if the substantial rights of the petitioners may have been prejudiced because the administrative findings, conclusions or decisions are:

(a) in violation of constitutional provisions; or

(b) in excess of the statutory authority or jurisdiction of the Commissioner or affected by other error of law; or

(c) made upon unlawful procedure; or

(d) unsupported by substantial evidence as weighed in view of the entire record as submitted; or

(e) arbitrary or capricious.

(c) Appeals procedure. An aggrieved party may secure a review of any final judgment of the superior court under this Act by writ of error to the appropriate appellate court.

Suspension of licenses.

Section 23. At such time as the Commissioner deems there has been a violation of this Act and the rules and regulations promulgated hereunder, he shall have the power and authority to suspend the license or registration pending investigation of such violation and until such time as the violation has been corrected to the satisfaction of the Commissioner. During the period of time of any investigation of a violation, the Commissioner shall have the power and authority to impound all books and records and to preserve and maintain evidence until investigation is completed. Provided, however, that the investigation shall be completed at the earlist practicable time.

Code Chapter 111-2 repealed.

Section 24. Code Chapter 111-2, relating to statistics on leaf tobacco is hereby repealed in its entirety.

1935 Act repealed.

Section 25. An Act approved March 28, 1935 (Ga. L. 1935, p. 476), fixing a maximum charge for selling and handling leaf tobacco is hereby repealed in its entirety.

1955 Act repealed.

Section 26. An Act approved March 9, 1955 (Ga. L. 1955, p. 589), relating to the sale of flue-cured leaf tobacco, is hereby repealed in its entirety.

Crimes.

Section 27. Any person who shall violate any provision of this Act for which no specific punishment is provided herein shall be guilty of a misdemeanor and upon conviction thereof shall be punished as provided by law.

Section 28. All laws and parts of laws in conflict with this Act are hereby repealed.

Approved March 7, 1960.